

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JESSIE BURKS, #1785904

§

VS.

§

CIVIL ACTION NO. 6:15cv589

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

Petitioner Jessie Burks, a prisoner confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the petition should be dismissed as time-barred. Petitioner has filed objections.

The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. In his objections, Petitioner asserts that his tardiness should be excused because of delays associated with the mail, such as the delay between the time the Texas Court of Criminal Appeals issued the decision denying his state application and when he received the decision. The Fifth Circuit had held, however, that there was no error in the decision not to apply the doctrine of equitable tolling regarding delays with the Texas Court of Criminal Appeals' notification system through mailed postcards. *Ott v. Johnson*, 192 F.3d 510, 514 (5th Cir. 1999), *cert. denied*, 529 U.S. 1099 (2000). The present petition was filed too late,

and it is time-barred. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Report and Recommendation (docket entry #13) is **ADOPTED**. It is further

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

It is SO ORDERED.

SIGNED this 14th day of August, 2015.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE